

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Notice of Proposed Rulemaking	)	
	)	
Appropriate Regulatory Treatment for	)	CC Docket No.02-52
Broadband Access to the Internet Over	)	
Cable Facilities	)	
	)	

**COMMENTS OF THE CITY OF DENTON**

These comments are filed by The City of Denton ("Denton") in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Denton believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

Denton is a Texas Home-Rule Municipality with a population of 80,809. It is served by Charter Communications, Inc., ("Charter") which has approximately 19,000 subscribers and CoServ, L.L.C. d/b/a CoServ Communications, ("CoServ") a small cable system with less than 100 subscribers. CoServ has operated its system without a franchise. The City has notified CoServ of its violations of City ordinances and federal law. CoServ has applied for a franchise and both parties are in the negotiation process. Charter has upgraded 85% of its system to offer Cable modem service.

2. The Charter franchise and cable modem service.

Our franchise was issued in 1999 to Charter authorizing a transfer of the Sammons/Marcus Cable Associates to Charter and required the cable operator to provide cable modem service throughout the community. In 1999 it was uncertain whether a Cable Operator could provide Cable modem service. The City and Charter specifically negotiated a provision allowing Charter to provide Cable modem service under the Cable franchise by using the following language:

Cable Modem, High Speed Data and Internet Services. The Federal Telecommunications Act of 1996 modified the definition of "cable services" in the Federal Cable Act (Title VI of the Communications Act of 1934, 47 USC Section 115

and following). The change addresses cable companies' ability to provide Enhanced, Advanced Cable Services over a Cable System as a cable service (and not as a telephone service, with accompanying telephone regulation.) The Franchise predates and does not reflect this legislative change. Company intends to provide Enhanced, Advanced Cable Services where economically feasible.

To remove any uncertainty on Company to provide Enhanced, Advanced Cable Services the parties agree that Company has the authority to provide Enhanced, Advanced Cable Services under the Franchise and that the revenues there from shall be included in gross revenues for the purpose of computing and paying cable franchise fees.<sup>1</sup>

Since 1999 Charter has paid and the City has received franchise fees for Cable modem service. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms. We estimate that we will lose \$100,000 over the next budget year if we cannot charge a fee on revenues from cable modem service.

Neither the franchise requirements nor the fees have prevented or delayed the roll-out of cable modem service in our community. As stated in paragraph 1, there is another cable operator in the City.

### 3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. The City does not keep a list of the number of Cable Modem complaints and refers the caller to Charter's 1-800 number. Responding to these complaints requires staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- When we get complaints about promotional practices, the complaint may apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and
- Customer complaints about installations and missed appointments may relate to both services. .

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<sup>1</sup> Exhibit 1, page 4, paragraph 12 of Ord.NO. 99-094 of the City of Denton.

As a result, when one service has problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise:

- The operator is prohibited from discriminating against potential customers.
- The operator is prohibited from demanding exclusive contracts as a condition of providing service to MDUs and others.

However, there are also important protections that did apply under our franchise that may not apply if cable modem services are NOT a cable service. The cable franchise requires Charter to follow Customer Service Standards. These standards were applied to Cable Modem Service because Charter required the customer to subscribe to Basic Cable in order to receive Cable Modem Service. As a result of the ruling, Charter now charges a \$10.00 access line fee to receive Cable Modem Service.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not. The funds that we obtain from cable modem franchise fees can help support the encouragement of broadband deployment with economic development incentives, the operation of the City's Cable TV system and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,



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